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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,913	09/23/2003	Michael Langton	13659/62101C	2536
26869	7590	06/02/2004	EXAMINER	
DEVINE, MILLIMET & BRANCH, P.A. 111 AMHERST STREET BOX 719 MANCHESTER, NH 03105			FRANCIS, FAYE	
			ART UNIT	PAPER NUMBER
			3712	

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/668,913

Applicant(s)

LANGTON, MICHAEL

Examiner

Faye Francis

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-19 is/are rejected.
- 7) ☒ Claim(s) 11 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/23/03</u> . | 6) <input type="checkbox"/> Other: ____.  |

### **DETAILED ACTION**

1. When applicant files a continuation-in-part whose claims are not supported by the parent application, the effective filing date is the filing date of the child CIP. Any prior art disclosing the invention or an obvious variant thereof having a critical reference date more than 1 year prior to the filing date of the child will bar the issuance of a patent under 35 U.S.C. 102(b). *Paperless Accounting v. Bay Area Rapid Transit System*, 804 F.2d 659, 665, 231 USPQ 649, 653 (Fed. Cir. 1986). In this case the effective filing date for claims that are not supported by the parent application is 9/23/03.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3 and 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robson et al' 6220922, hereinafter Robson in view of Zhong and Lee et al hereinafter, Lee.

Robson discloses in Figs 1-6, a pose able figure comprising a torso 20 including a spine system [lower portion 30, middle portion 40 and upper portion 50] having a first spine end and a second spine end including a plurality of mating spine segments articulated with each other wherein each of the plurality of mating spine segments are engaged, in a friction fit, with an adjacent mating spine segment such that each of the plurality of mating spine segments swivels with respect to one another, ball and cup

joint elements [abstract line 3], the spine being variably position able into a curvilinear arch, with the torso portion conforming to the spine as recited in claim 1. Additionally, Robson discloses a first set of appendages [arms 14], a second set of appendages [legs 16] and a head 12 which are coupled to the spine as recited in claims 5-10.

Robson does not disclose that each of the plurality of mating spine segments includes a generally cup-shaped portion having an open concave receiving region and a rear wall; and a ball-shaped portion extending from the rear wall of the generally cup-shaped portion, wherein the ball-shaped portion of one of the plurality of mating spine segments is received in a concave receiving region of a mating one of the plurality of mating spine segments; and a soft body portion disposed around the spine system and is made of a polymeric or gel material such that the friction fit between the mating spine segments counteracts the memory of the material to allow various poses to be held.

With respect to the soft body portion Robson teaches a desirability to exhibit the shape and appearance of muscle and fatty areas as well as skeletal areas [see col 1 for example]. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Robson with the soft torso in order to make the device more realistic.

With respect to the soft body portion is made of a polymeric material. Lee teaches that it is conventional to stuff the cavities of the body and limbs of an articulating figure with soft deformable material such as polyester fiber or gel. Therefore, it would have been obvious to further provide the device of Robson with the missing structural elements in order to make the device even more realistic.

Zhong is cited to show desirability to use a universal joint [a generally cup-shaped portion having an open concave receiving region and a rear wall; and a ball-shaped portion extending from the rear wall of the generally cup-shaped portion] device for pivotally coupling any part of the body that need to be moved with the other parts. It would have been obvious to further provide the device of Robson with an additional coupler [ball and cup] in order to make the doll taller.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Robson in view of Zhong and Lee as applied to 1-3 and 5-10 above and further in view of Acker.

Modified device of Robson has most of the elements of this claim but for the soft body portion is made of silicone gel material.

Acker teaches that using silicone gel material, as a stuffing in a doll is conventional [col 5 lines 45-49]. It would have been obvious to further provide the modified device of Robson with the silicone gel material as taught by Acker in order add to the realism of the doll structure.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Robson in view of Zhong and Lee as applied to 1-3 and 5-10 above and further in view of Shapero et al, hereinafter Shapero.

Modified device of Robson discloses most of the features of this claim but for the soft body portion is made of visco-elastic foam material.

Shapero discloses that it is well known to provide a flexible and resilient foam covering [col 1 line 44] surrounding the frame [skeleton] for the figure doll. It would have been obvious to modify the torso portion of Robson to have foam covering as taught by

Shapero in order to make the figure more flexible. Additionally, it would have been obvious to use any well-known foam material such as visco-elastic foam depending on the degree of flexibility desired.

6. Claims 12-13 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robson in view of Lee.

Robson discloses most of the elements of these claims as stated above.

Robson does not disclose an outer covering over the torso portion and the torso portion is made of a gel material.

With respect to the outer covering over the torso portion, Robson teaches a desirability to exhibit the shape and appearance of muscle and fatty areas as well as skeletal areas [see col 1 for example]. Therefore, it would have been obvious to provide the device of Robson with the soft torso and a soft material covering the torso in order to make the device more realistic.

With respect to the torso portion is made of a gel material, Lee teaches that it is conventional to stuff the cavities of the body and limbs of an articulating figure with soft deformable material such as polyester fiber or gel. Therefore, it would have been obvious to further provide the device of Robson with the missing structural elements in order to make the device even more realistic.

7. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Robson in view of Lee as applied to 12-13 and 15-19 above and further in view of Acker.

Modified device of Robson has most of the elements of this claim but for the torso portion is made of silicone gel material.

Acker teaches that using silicone gel material, as a stuffing in a doll is conventional [col 5 lines 45-49]. It would have been obvious to further provide the modified device of Robson with the silicone gel material as taught by Acker in order add to the realism of the doll structure.

### ***Allowable Subject Matter***

8. Claims 11 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Double Patenting***

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1-10 and 12-19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 4 of U.S. Patent No. 6,478,653, hereinafter US'653 "Robson, Zhong and Lee. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-10 and 12-19 recite all of the elements claimed in US'653 but for

features such as a soft body portion disposed around the spine system and is made of a polymeric or gel material as required in claims 1 and 12 of the patent. On the other hand, it would have been obvious to provide the device claimed in US'653 with the soft body portion made of polymeric or gel material in order to make the device more realistic.

11. Claims 1-10 and 12-19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 4 of U.S. Patent No. 6,110,002, hereinafter US'002 " Robson, Zhong and Lee. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-10 and 12-19 recite all of the elements claimed in US'002 but for features such as a soft body portion disposed around the spine system and is made of a polymeric or gel material as required in claims 1 and 12 of the patent. On the other hand, it would have been obvious to provide the device claimed in US'002 with the soft body portion made of polymeric or gel material in order to make the device more realistic.

### ***Conclusion***

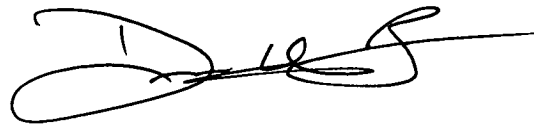
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye Francis whose telephone number is 703-306-5941. The examiner can normally be reached on M-F 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 703-308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FF

A handwritten signature in black ink, appearing to read 'D. Banks', with a long horizontal line extending to the right.

DERRIS H. BANKS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700